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January 7, 2004

*Transmitted via facsimile no. 202-512-9749;
and UPS Overnight Delivery*

General Accounting Office
Procurement Law Group
441 G Street NW
Washington, DC 20548

Re: Solicitation DABJ41-03-R-001
Pre-Award Protest

To Whom It May Concern:

Pursuant to FAR 33.104, Ms. Byong Lee, doing business as Quality First Cleaning, hereby protests the Contracting Agency's exclusion of her proposal on December 3, 2003 from the competitive range, on the above referenced solicitation and the refusal to accept revisions or clarifications to her proposal as set forth in the Agency's letter of December 29, 2003.

For purposes of this pre-award protest to the GAO, the Protestor's name, address, telephone and fax numbers are:

Ms. Byong Lee, d/b/a Quality First Cleaning
804 McClure St.
Junction City, Kansas 66441
Phone No. 785-375-9682;
Facsimile No. 785-238-0546

In addition, any communication concerning this protest may be properly addressed to Ms. Byong Lee and will be received on her behalf by this office at the above address and phone number.

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The Contracting Agency's name, address, telephone and fax numbers are

Dept. of the Army, Directorate of Contracting,
Building 802, Marshall Airfield,
P.O. Box 2248, Fort Riley, KS 66442-5000
Phone No. 785-239-0488;
Facsimile No. 785- 238-8983

The solicitation at issue, and which is subject of this protest is:

DABJ41-03-R-0001, Custodial Services

The legal and factual grounds for Ms. Lee's protest are set forth below as follows:

- a. There has yet to be an award on the above referenced solicitation.
- b.1 Ms. Lee has been the project manager for the incumbent contractor on the same scope of work, as that described by Solicitation DABJ41-03-R-001 for approximately nine and a half (9 ½) years now.
- b.2 While serving as Project Manager over this nine and a half (9 ½) year period, the quality of contractor's performance was never questioned by the contracting agency. The only contract deficiency during this period was a billing error, which resulted from the contractor's corporate office being unaware that a building was being remodeled, and not receiving janitorial services during the period covered by the contractor's invoice.
- c. Members of the Source Selection Evaluation Team (or Board) knew, or should have known of Ms. Lee's long established and proven capability for full and successful performance of the scope of work covered by this solicitation.
- d.1 Nonetheless, on December 3, 2003 Ms. Julie A. Bowell, acting in her capacity as Contracting Officer, gave summary notice that Ms. Lee's proposal had been evaluated; and as a result of that evaluation, had been removed from award consideration. A true and correct copy of that Notification is attached hereto and marked as Exhibit A.
- d.2 Said Exhibit A was the first communication Ms. Lee received from the contracting agency following the submission of her proposal.
- d.3 The December 3, 2003 notice did not advise Ms. Lee that revisions to the proposal would not be considered as would otherwise be required by FAR 15.503(a), nor did it provide other information, that would have been required in the event of a post award debrief by FAR 15.503(b).

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d.4 In said Exhibit A, Howell did not specify the basis for removal of the proposal from consideration for award, nor did Howell specifically advise Ms. Lee that her proposal "had been removed from the competitive range."

e.1 The solicitation that is the subject of this protest gave no notice that the government intended to make an award without entering into discussions with offerors.

e.2 The solicitation did not allow reduction of the number of proposals for purposes of efficiency.

e.3 Ms. Lee timely requested a pre-award debrief on December 5, 2003, and received a written response from Ms. Howell acting as "contracting officer" on December 10, 2003. In responding to the debriefing request however, Howell cited to FAR 15.506, which applies to "Postaward Debriefing of Offerors." As set forth in ¶a. of this Protest, there has yet to be an award on this solicitation. In fact, the Protestor believes the contracting agency is presently conducting exchanges with offerors who have ostensibly been determined to be within the competitive range. A true and correct copy of Ms. Howell's response to Lee's December 5, 2003 debriefing request is attached hereto and marked as Exhibit B

e.4 On the first page of said Exhibit B, under the heading of "Price Proposal Factor" Ms. Howell stated that the contracting agency did not consider Ms. Lee's price proposal.

e.5 On the second page of said Exhibit B, under the heading of "Past Performance Factor" Ms. Howell stated Lee's past performance factor was considered "satisfactory".

e.6 The only deficiencies identified by Ms. Howell in said Exhibit B, were perceived ambiguities and deficiencies or mistakes in Lee's proposal.

f.1 Also on December 10, 2003, the same date as the pre-award debrief, Ms. Lee met with Mr. Larry McGee of Ft. Riley's Directorate of Public Works (DPW).

f.2 At that meeting Mr. McGee reported that Ms. Lee to had alleged that a DPW employee (Mr. Mick McCallister) had "blackballed" Ms. Lee's proposal. This report was apparently relayed to Ms. Howell.

f.3 In a letter to Ms. Lee, dated December 16, 2003, Ms. Howell in her capacity as contracting officer, disavowed "any such action" on the part of the Source Selection Authority. A true and correct copy of her letter of December 16, 2003 is attached hereto and marked as Exhibit C.

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f.4 In said Exhibit C, Ms. Bowell also claimed that the Source Selection Board had followed the procedures of the Source Selection Plan, and that as a result, the Source Selection Authority had determined that Ms. Lee's proposal "failed to meet or address" all the requirements of the solicitation.

g.1 On behalf of Ms. Lee, by means of a letter from this office to Ms. Bowell and Ms. Pier dated December 24, 2003, this office proposed to rectify any proposed ambiguities in the proposal. A true and correct copy of said December 24, 2003 letter is attached hereto and marked as Exhibit D.

g.2 On December 29, 2003 however, Ms. Bowell responded to this office's letter of December 24, 2003. In her December 29, 2003 letter, Ms. Bowell cited to FAR 15.503(a)(1) (not FAR 15.506 as she did in her letter of December 10, 2003), and alleged that pursuant to that regulation, Ms. Lee was informed on December 3, 2003 both that her proposal was excluded from the competitive range and that no further proposal revision would be considered. A true and correct copy of Bowell's letter of December 29, 2003 is attached hereto and marked as Exhibit E.

g.3 Nevertheless, the notice of December 3, 2003 (See, Exhibit A) did not refer to the regulation cited by Ms. Bowell in Exhibit E, nor did it advise that further proposal revisions would not be considered, nor did it expressly state that Ms. Lee's proposal had been removed from the competitive range, or otherwise provide any justification for removal of Ms. Lee's proposal from further consideration of award.

h. Ms. Lee's proposal was improperly removed from the competitive range contrary to the applicable evaluation procedures required by FAR §15.305 and FAR §15.306(c)(1).

i.1 Based on previous dealings with DPW agents or employees, Ms. Lee has a good faith belief that her proposal was "blocked" not "blackballed" by a DPW employee or employees who participated in the Source Selection Team (or Board) by means of magnifying mere ambiguities in her contract proposal to proposal deficiencies.

i.2 Ms. Lee believes DPW agent or agents were motivated to do so in significant part by animus against Ms. Lee because of her race (Asian) and nationality (Korean).

j. To the extent either Exhibits B or C identified any substantive concerns about Ms. Lee's proposal, the concerns so identified should have been addressed by the Agency pursuant to FAR §15.306(d).

k. Pursuant to FAR 33.102, on January 5, 2004, Ms. Lee protested the contracting agency's refusal to conduct exchanges with her, or to include her

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proposal amongst other proposals considered to be within the competitive range. A true and correct copy of her Protest (without attachments) is attached hereto and marked as Exhibit F.

l. On January 6, 2004 however Ms. Bowell, in her capacity as the contracting officer for the contracting agency denied the protest on the grounds that it was not filed within ten (10) days of the contracting agency's debriefing response on December 10, 2003 (Exhibit B). Ms. Bowell failed to address the contracting agency's failure to give notice that no further revisions would be considered. Independent review of Ms. Bowell's decision by the contracting agency is still pending. A true and copy of Ms. Bowell's response to the Ms. Lee's protest is attached hereto and marked as Exhibit G.

m. Ms. Lee's protest to both the GAO and the Agency is timely, having been brought within ten (10) days of the contracting agency's regulatory sufficient notice on December 29, 2003.

Ms. Lee requests a ruling on this protest from the Comptroller General of the United States. Ms. Lee further requests the following forms of relief:

Ms. Lee simply requests that her proposal be included with other proposals determined to be in the competitive range of proposals for the above referenced solicitation; and, that she be afforded an opportunity to address any concerns about the proposal which have been heretofore identified by the contracting officer, or any other concerns, pursuant to FAR §15.306(d).

Ms. Lee also requests reimbursement for her fees incurred incident to this protest.

Respectfully submitted,

HOOVER, SCHERMERHORN, EDWARDS,
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By 
Peter Charles Rombold

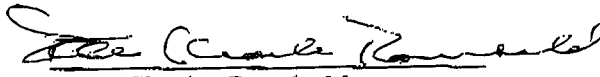
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CERTIFICATE OF DELIVERY BY FACSMILE
AND FIRST CLASS MAILING

I hereby certify that on January 7, 2003 the foregoing Protest, together with attachments was transmitted via Facsimile No. 785-239-8983 and mailed by U.S. mail, first class postage prepaid, and properly addressed to:

Julie A. Bowell and Velia Pier
Contracting Officers
Office of the Assistant Secretary of the Army
Acquisition Logistics and Technology
Army Contracting Agency
Directorate of Contracting
P.O. Box 2248
Fort Riley, Kansas 66442-0248


Peter Charles Rombold